

STATE OF COLORADO

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Colorado Department
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MEMORANDUM

SDMS Document ID



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TO: Carol Russell, U S - EPA, Region VIII

FROM: J. David Holm, Director, Water Quality Control Division

DATE: May 31, 1996

SUBJECT: Sunnyside Gold/WQCD Consent Decree and Associated NPDS Permits

As you may be aware, the Water Quality Control Division and Sunnyside Gold Corporation entered into a settlement which was reflected in a Consent Decree ordered by the Court on May 8, 1996. The Consent Decree represents a formal settlement of a legal dispute brought by Sunnyside Gold Corporation in the form of a lawsuit against the Water Quality Control Division. The lawsuit concerned whether seeps and springs resulting from plugging and the subsequent filling of the mine would be point source discharges of pollutants subject to permits. The settlement involves commitments on the part of Sunnyside Gold Corporation to mitigate historic water quality impacts and mine waste at a number of inactive mines in the upper Animas Basin. These activities should offset water quality problems, if any, that are attributable to seeps and springs which might result from mine closure.

Attached you will find a Responsiveness Summary prepared by the Water Quality Control Division to address specific comments we received from EPA and the public concerning the settlement agreement and associated NPDES permits. It was gratifying to see the level of interest in this settlement agreement as reflected in the voluminous comments received by the Division. The comments have been addressed in two sections. The first section relates to specific comments raised by the Environmental Protection Agency and the second section addresses comments from the public. The comments and responses in both sections are arranged by the page and paragraph number they relate to.

I believe the responsiveness summary is self-explanatory in the sense of accurately describing where changes were made or not made in the Consent Decree or permit document. Therefore, the Consent Decree and permits are not included in this package. However, a complete copy of the package will be sent to the Animas River Stakeholders coordinator and copies are available from the Water Quality Control Division.

As you will see from reading the comments and responses, a relatively small number of changes were made in the draft documents which you received earlier. As a result of the comments, however, many hours of discussions were held between the parties. The topic that received the greatest amount of discussion was in relation to the amount of data and statistical methodology to be used at the end of the project to determine whether a successful termination of the permit could be approved. Unfortunately, the parties were not able to come to a mutually satisfactory change in the statistical approach. Therefore, no changes were made in Appendix A.

It is important to recognize that this settlement resulted from an even-handed negotiation which took place over nearly a year between the parties. The Division feels that the results of the settlement are better and provide more flexibility in the future than the likely results of litigation would have provided. The Division is firmly committed to water quality improvement in the Animas Basin. While this agreement was focused on maintaining or improving the current ambient zinc concentration in the Animas River below Silverton, the mitigation projects to be carried out under the agreement should provide water quality benefits with respect to other parameters as well. Moreover, there are a wide variety of water quality problems which can be addressed by the stakeholder group which are beyond the scope of the settlement agreement. For example, habitat improvements and erosion control projects are needed throughout the upper Animas Basin. The Division is deeply interested in working with the stakeholders in identifying a range of opportunities for improving water quality which will complement the projects scheduled to be completed under the consent agreement.

I would like to thank each of the commentators for the thoughtful issues and concerns you raised. Each comment was carefully considered prior to finalizing the agreement. Please feel free to call me with any questions or comments you may have at (303) 692-3508.